**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CRIMINAL APPELLATE JURISDICTION**
**CRIMINAL APPLICATION NO.5190 OF 2005**

Raosaheb Vishwanath Patil & Ors. ...Applicants
vs.
State of Maharashtra ...Respondent

Mr.Umesh Mankapure for the Applicants
Ms Rajeshree Gadhvi,A.P.P. for State

**CORAM: A.S.OKA,J.**
**DATE : AUGUST 18,2005**

**P.C.:**

1. Heard Advocate for the Applicants and learned A.P.P. for State. The offence registered against the Applicants is punishable under Sections 498-A, 306, 504 read with Section 34 of I.P.C. The application for anticipatory bail made by the Applicants has been rejected by the Sessions Court by holding that the bail anticipatory bail cannot be granted in favour of the Applicants for unlimited duration. The Applicant No.1 is the husband of the deceased. Applicant No.2 is the married sister of the Applicant No.1 and the Applicant No.3 is the son of the Applicant No.2.

2. Shri Kulkarni for the Applicants submitted that in fact the death was caused due to accidental fire and the dying declaration to that effect has been registered. He submitted that there is a gross delay in filing F.I.R. He submitted that in fact the Applicant no.1 himself tried to save the deceased and the Applicant No.1 has sustained burn injuries.

He pointed out that the Applicant No.1 had taken the deceased to the hospital and at the instance of the parents of the deceased, she was shifted to the hospital at Latur where she expired. He submitted that if the Applicant No.1 is arrested, there is no one to look after the infant. The learned A.P.P. produced relevant material against the Applicants and submitted that custodial interrogation of the Applicants is required.

3. I have considered the submissions. The marriage between the Applicant No.1 and the deceased was solemnised on 23rd April 2004. The investigation papers produced for my perusal show that at this stage there is enough material on record to show complicity of the Applicants No.1. In so far as the applicant Nos.2 and 3 are concerned, the only allegation against them seems to be that as per the demand made by the Applicant No.1, certain amount was paid to the Applicants Nos.2 and 3 by the first informant. Except for general allegations made against the Applicant Nos.2 and 3, there are no specific allegations made against the Applicant Nos.2 and 3. The Applicant No.2 is 47 years old married sister of the Applicant No.1 and applicant No.3 is only 23 years old. Considering the nature of the allegations made against the Applicant Nos.2 and 3, it is very difficult to come to the conclusion that custodial interrogation of the Applicant Nos.2 and 3 is required.

4. However, so far as Applicant No.1 is concerned, considering the gravity of the allegations and seriousness of the offence, it cannot be said that custodial interrogation is not required. Therefore, so far as Applicant no.1 is concerned, no case is made out. Applicant Nos.2 and 3 are entitled to relief.

5. Before parting with the order, it will be necessary to refer the decision of the Sessions Court in application for bail filed by the Applicants. In my view, the learned Judge has misread the decision of the Supreme Court which lays down that anticipatory bail can be granted only for a limited duration. The learned Sessions Judge has held that as interim bail granted in favour of the Applicants was in operation for about two months, it was not necessary to extend the relief. While doing so the learned Judge has not examined the merits of the case of the Applicants. In my view, the approach of the learned Judge was totally erroneous.

6. Hence I pass the following order :

i) Application of Applicant No.1 is rejected.

ii) In the event of the arrest of the Applicant Nos.2 Sou.Suwarna @ Ashabai Vijaykumar Khadke and Applicant No.3

Amar Vijaykumar Khadke in connection with C.R.No.48/2005 registered with Pangari Police Station, Solapur the Applicant Nos.2 and 3 shall be enlarged on bail subject to furnishing P.R.Bond in the sum of Rs.10,000/- (Rupees ten thousand) each with one or two local sureties each in the like amount.

iii) The Bail is granted subject to condition that the Applicants Nos.2 and 3 will attend the concerned Police Station as and when called upon to do so till filing of the charge sheet and will cooperate for the purposes of investigation.

iv) The Bail is granted subject to condition that the Applicants Nos.2 and 3 shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of accusation against him so as to dissuade him from disclosing such facts to the Court or to the Police Officer/investigating agency. The Applicants Nos.2 and 3 shall not tamper with the prosecution evidence.

v) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

vi) This order will enure to the benefit of the Applicants Nos.2 and 3 only till charge sheet is filed. Thereafter, he

will be free to apply to the appropriate Court for appropriate relief.

vii) Application is disposed of in above terms.

viii) The parties to act upon an authenticated copy of this order.

. At this stage, the learned Advocate for the Applicants prays that reasonable time may be granted to surrender to the applicant No.1 before the Investigating Officer. The said request is opposed by the learned A.P.P. by contending that the Applicants No.1 is not co-operating for the purpose of investigation. Considering the fact that the Applicants No.1 is protected by the Sessions Court for some time and it is stated that he is a ‘Shikshan Sevak’, time is granted till 20th August 2005 to the Applicant No.1 to surrender before the Investigating Officer.

**JUDGE**